

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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MSD CONSUMER PRODUCTS, INC.,  
SANTARUS, INC., and THE CURATORS  
OF THE UNIVERSITY OF MISSOURI,

Plaintiffs,

v.

ZYDUS PHARMACEUTICALS  
(USA), INC.,

Defendant.

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No. 11-cv-7437 (PGS) (LHG)

**JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT**

Plaintiffs MSD Consumer Products, Inc., Santarus, Inc. and The Curators Of The University Of Missouri (collectively, “Plaintiffs”) and Defendant Zydus Pharmaceuticals (USA), Inc. (“Zydus”) hereby provide their Joint Claim Construction and Prehearing Statement concerning U.S. Patent No. 7,399,772 (“the ’772 patent” or “the patent-in-suit”) in accordance with Local Patent Rule 4.3 of the United States District Court for the District of New Jersey.

**I. BACKGROUND**

This is a Hatch-Waxman Act patent action. Plaintiffs assert, among other things, that Zydus has infringed the patent-in-suit by filing an Abbreviated New Drug Application (“ANDA”) with the U.S. Food and Drug Administration seeking approval to market generic versions of Zegerid® OTC brand pharmaceutical products. Zydus alleges that the asserted claims of the patent-in-suit are invalid and/or not infringed.

**II. CONSTRUCTION OF TERMS**

**A. Construction of Terms on Which the Parties Agree**

In accordance with Local Patent Rule 4.3(a), the parties have agreed on this

construction:

<b>Claim 1 of U.S. Pat. No. 7,399,772</b>	
<b>Claim Term</b>	<b>Parties' Agreed Construction</b>
"solid pharmaceutical composition"	"a solid dosage form that is pharmaceutically acceptable for storage, shipping, and administration, including a powder that can be combined with an aqueous medium and then orally administered."

**B. Each Party's Proposed Construction of the Claim Terms in Dispute**

In accordance with Local Patent Rule 4.3(b), the parties have not identified any disputed claim terms.

**C. Claim Terms Whose Construction Will Be Most Significant or Dispositive**

In accordance with Local Patent Rule 4.3(c), the parties do not believe that their agreement on the term "solid pharmaceutical composition" will be case-dispositive or substantially conducive to promoting settlement.

**D. Anticipated Length of Time Necessary for the Claim Construction Hearing and Tutorial**

In accordance with Local Patent Rule 4.3(d), since the parties are in agreement on the above claim term, the parties' view is that a claim construction hearing will not be necessary.

**E. Identification of Witnesses for the Claim Construction Hearing**

Not applicable.

Respectfully submitted,

By their attorneys for Plaintiffs:

s/ Sheila F. McShane

Date: March 28, 2013

Sheila F. McShane, Esq.

**GIBBONS P.C.**

One Gateway Center

Newark, New Jersey 07102-5310

Telephone: (973) 596-4500

Facsimile: (973) 596-0545

Email : smcshane@gibbonslaw.com

*Attorneys for Plaintiffs MSD Consumer Products, Inc., Santarus, Inc., and The Curators of the University of Missouri*

*Of Counsel:*

Raymond N. Nimrod, Esq.

Gregory D. Bonifield, Esq.

**QUINN EMANUEL URQUHART & SULLIVAN, LLP**

51 Madison Avenue, 22nd Floor

New York, New York 10010

Telephone: (212) 849-7000

Facsimile: (212) 849-7100

Email: raynimrod@quinnemanuel.com

gregbonifield@quinnemanuel.com

*Attorneys for Plaintiff MSD Consumer Products, Inc.*

Joseph A. Mahoney, Esq.

**MAYER BROWN LLP**

71 South Wacker Drive

Chicago, Illinois 60606

Telephone: (312) 701-7390

Facsimile: (312) 706-8556

Email: jmahoney@mayerbrown.com

*Attorneys for Plaintiff The Curators of the University of Missouri*

By their attorneys for Defendants:

s/ Vincent P. Rao II

Date: March 28, 2013

Steven J. Moore, Esq.

James M. Moriarty, Esq.

**KELLEY DRYE & WARREN LLP**

400 Atlantic Street

Stamford, Connecticut 06901

Telephone: (203) 351-8034

Facsimile: (203) 327-2669

Email: jmoriarty@kelleydrye.com

Joseph A. Boyle

Nainesh Ramjee

Vincent P. Rao II

**KELLEY DRYE & WARREN LLP**

200 Kimball Drive

Parsippany, New Jersey 07054

Telephone: (973) 503-5900

Facsimile: (973) 503-5950

Email: jboyle@kelleydrye.com

nramjee@kelleydrye.com

vr Rao@kelleydrye.com

*Attorneys for Defendant Zydus Pharmaceuticals (USA) Inc.*

Morgan Chu, Esq.  
Gary N. Frischling, Esq.  
**IRELL & MANELLA LLP**  
1800 Avenue of the Stars  
Suite 900  
Los Angeles, California 90067  
Telephone: (310) 277-1010  
Facsimile: (310) 203-7199  
Email: mchu@irell.com  
gfrischling@irell.com

*Attorneys for Plaintiff Santarus, Inc.*